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6 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
7 SAN FRANCISCO DIVISION

8 IN RE: OPTICAL DISK DRIVE ANTITRUST
9 LITIGATION

Case No. 10-md-2143-RS (JCS)

Chief Judge Richard Seeborg

10 This Document Relates to:
11 All Indirect Purchaser Actions

12 **STATEMENT TO PROPOSED ORDER
FOR SECOND DISTRIBUTION FILED BY
INDIRECT PURCHASER PLAINTIFFS**

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1 **STATEMENT TO PROPOSED ORDER FOR SECOND DISTRIBUTION FILED BY**
 2 **INDIRECT PURCHASER PLAINTIFFS**

3 IPPs proposed the remainder funds after second distribution be “escheated” to the State
 4 Attorney General for California. Dkt. No. 3114 at 2. They seem confused about circuit law.

5 “[w]hen modern, large-scale class actions are resolved via settlement, money
 6 often remains in the settlement fund even after initial distributions to class
 7 members have been made because some class members either cannot be located
 8 or decline to file a claim.” *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 473
 9 (5th Cir. 2011); *see Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d
 10 1301, 1307 (9th Cir. 1990). Courts have recognized a few possible solutions to the
 11 problem of unclaimed settlement funds. **One option is to permit such funds to**
 12 **escheat to the government.** *Hodgson v. YB Quezada*, 498 F.2d 5, 6 (9th Cir.
 13 1974); *see 28 U.S.C. § 2042* (providing that funds “unclaimed by the person
 14 entitled thereto” for five years revert to the federal treasury). In other cases,
 15 courts have permitted additional pro rata distributions to those class members who
 16 did claim funds. *See, e.g.*, *Klier*, 658 F.3d at 475. “[I]n exceptional
 17 circumstances,” courts have even recognized that “it may be proper to permit
 18 unclaimed sums to revert to the [defendant].” *YB Quezada*, 498 F.2d at 6; *see*
 19 *also, e.g.*, *Van Gemert v. Boeing Co.*, 739 F.2d 730, 736–37 (2d Cir. 1984).

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12 *Joffe v. Google Inc.*, 21 F.4th 1102, 1110–1111 (9th Cir. 2022) (emphasis added). And
 21 13 Ninth Circuit precedent “remains binding until the Supreme Court “undercut[s] the theory or
 22 14 reasoning underlying the prior circuit precedent in such a way that the cases are clearly
 23 15 irreconcilable.”” *United States v. Henry*, 688 F.3d 637, 642 (9th Cir. 2012). Should Class Counsel
 24 16 wish to escheat, circuit law of the last 30 years decided the only proper route for **escheat must go**
 25 17 to the U.S. Treasury. *See Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039–40 (9th Cir. 2011) (“We
 26 18 directed the district court on remand to consider *escheating the funds pursuant to 28 U.S.C. §*
 27 19 **2042¹** if the court could not develop an appropriate *cy pres* distribution.”) (quoting *Six (6) Mexican*

28 22 1 “In every case in which the right to withdraw money deposited in court under section
 29 23 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at
 30 24 least five years unclaimed by the person entitled thereto, such court shall cause such money to be
 31 deposited in the Treasury in the name and to the credit of the United States.” 28 U.S.C. § 2042.

1 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1309 (9th Cir. 1990)) (emphasis added); *Hodgson*
2 *v. YB Quezada* , 498 F.2d 5, 6 (9th Cir. 1974) (escheating to the U.S. Treasury).

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4 Date: September 21, 2022

Respectfully Submitted,

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10 **CERTIFICATE OF SERVICE**

I, Shiyang Huang, hereby certify that on September 21, 2022, I caused a copy of the foregoing to be served by this Court's CM/ECF system on all *pro se* parties and counsels of record.

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12 /s/ Shiyang Huang
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